

SERVICE DATE – JANUARY 9, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 750X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
CLAY, MARION, AND CLINTON COUNTIES, ILL.

Digest:¹ This decision permits CSX Transportation, Inc. to discontinue rail service over certain segments of railroad in Clay, Marion, and Clinton Counties, Ill., subject to standard employee protective conditions.

Decided: January 5, 2017

CSX Transportation, Inc. (CSXT), filed with the Board a petition² under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 to discontinue rail service over an approximately 59.3-mile rail line on its Southern Region, Nashville Division, Illinois Subdivision, between milepost BC 244.7, near Flora, and milepost BC 304.00, near Aviston, in Clay, Marion, and Clinton Counties, Ill. (the Line).

Notice of the exemption proceeding was served and published in the Federal Register on October 25, 2016 (81 Fed. Reg. 73,463). No comments concerning the proposed discontinuance were filed. The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² CSXT initially filed the petition on August 31, 2016. By letter filed September 12, 2016, CSXT notified the Board that it had omitted two U.S. Postal Service Zip Codes (62219 and 62231) from its notice. By letter filed September 19, 2016, CSXT notified the Board that it had republished the notice of the proposed discontinuance in newspapers of general circulation in Clay, Marion, and Clinton Counties, Ill. By letter dated October 5, 2016, CSXT stated that it omitted Zip Code 62219 only. Zip Code 66231, which was identified as omitted in CSXT's September 12 and 19 letters, was in fact included in its original petition. CSXT also filed with its October 5 letter copies of the certificates of publication and requested permission to amend Exhibit D of its petition to include the certificates. October 5, 2016 is therefore considered the filing date for the purpose of this proceeding.

BACKGROUND

CSXT states that it operated the Line until June 10, 2016, when the Line was embargoed due to the condition of the ties. According to CSXT, the last shipper on the Line is ProBuild East, LLC (ProBuild). CSXT states that it has kept ProBuild apprised of the condition and the embargo of the Line.

According to CSXT, continued operation of the Line will create a burden on CSXT and on interstate commerce. CSXT explains that local traffic on the Line fell to two cars in 2014, two cars in 2015, and no traffic to date in 2016. According to CSXT, ProBuild has used alternative transportation instead of using CSXT service. CSXT states that ProBuild's transportation alternatives include a transload facility offered by CSXT and motor carrier service. Additionally, CSXT states that all overhead traffic has been rerouted.

CSXT states that the traffic on the Line is not sufficient to offset maintenance costs or the costs required to rehabilitate the ties on the Line. According to CSXT, it incurred avoidable costs of \$606,599 in 2015, and it projects the same losses in 2016. CSXT also states that discontinuance of service over the Line would allow it to avoid inspection and maintenance costs of \$543,000 and rehabilitation costs of \$7,020,000.

According to CSXT, it is hopeful that traffic will return to the Line and is therefore only seeking discontinuance authority to reduce its costs in the interim. CSXT states that it will not remove the track and material from the Line and acknowledges that abandonment authorization would be required from the Board if it decides to abandon the Line in the future.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of CSXT's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. CSXT states that, even prior to the embargo, there had been no local traffic on the Line in 2016. Moreover, CSXT has demonstrated that the revenue from the 2014-2015 traffic is insufficient to cover the costs of operating and maintaining the Line. (See CSXT Pet. 15.) Thus, granting this exemption would promote an efficient rail transportation system, foster sound economic conditions in transportation, and encourage efficient management of railroads. 49 U.S.C. § 10101(3), (5), & (9). An exemption would also minimize the unnecessary expenses associated with the preparation and filing of a formal discontinuance of service application, expedite regulatory decisions, and reduce regulatory barriers to exit. 49 U.S.C. § 10101(2) & (7). Other aspects of the RTP would not be adversely affected by the exemption.

We also find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power.³ There is no overhead freight traffic on the Line, and ProBuild, the only customer on the Line, has alternate transportation service available, including a transload service offered by CSXT and motor carrier service. Thus, discontinuance of service over the Line will not leave ProBuild without transportation alternatives. Additionally, ProBuild has not opposed the discontinuance. Nevertheless, to ensure that ProBuild is informed of this proceeding and of our action, the Board will direct CSXT to serve a copy of this decision on ProBuild so that it receives it within five days of the service date of this decision, and to certify to the Board contemporaneously that it has done so.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose on CSXT the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Line for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances.

Because there would be environmental review during any subsequent proceeding for authority to abandon, discontinuance proceedings do not require an environmental review.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of operations by CSXT over the above-described rail line, subject to the employee protective conditions set forth in Oregon Short Line.

2. CSXT is directed to serve a copy of this decision on ProBuild so that it receives it within five days after the service date of this decision, and to certify contemporaneously to the Board that it has done so.

3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by CSXT and the Board by January 19, 2017, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,700. See Regulations Governing Fees for Servs. Performed in Connection with

³ Because we find that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed discontinuance is limited in scope.

Licensing & Related Servs.—2016 Update, EP 542 (Sub-No. 24) (STB served Aug. 2, 2016).⁴

4. OFAs for subsidy and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: “**Office of Proceedings, AB-OFA.**”

5. Petitions to stay and petitions to reopen must be filed by January 24, 2017.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on February 8, 2017.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

⁴ Consistent with our precedent, any person seeking to file an OFA must provide evidence that there is some shipper that would make use of common carrier service. See, e.g., CSX Transp., Inc.—Aban. Exemption—in Wash. Cty., Md., AB 55 (Sub-No. 727X) (STB served Oct. 24, 2013); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cty., Iowa, AB 33 (Sub-No. 300X) (STB served Jan. 20, 2012).